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No. 00-427

Supreme Court, U.S.
FILED
DEC 4 2000
CLERK

In The

# Supreme Court of the United States

CELLULAR PHONE TASKFORCE,

*Petitioner,*

v.

FEDERAL COMMUNICATIONS COMMISSION and THE UNITED STATES OF AMERICA,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit**

## BRIEF OF *AMICI CURIAE* Disability Council Of The White Mountains, Oregon State Rehabilitation Council, Unitarian Universalist Association, The Jeremiah Project, National Center For Environmental Health Strategies, National Coalition For The Chemically Injured, Chemical Injury Information Network, Inc., Environmental Health Network Of California, Environmental Health Association Of California, Ecology House, Inc., Health And Habitat, Inc., Citizens' Task Force On Radiation Exposure, Joy Rothenberg, Linda J. Allen, Scott Hamilton Dykes, Richard Kimball, Marta Sonnenblick, Richard Uhtenwaldt, Sylvia Williamson, and Louise Yost in support of Petition for a Writ of Certiorari

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## QUESTION PRESENTED

Whether federal agency rulemaking, which sets standards for a pervasive industry, and which preempts local government zoning decisions regarding that industry, constitutes a "program or activity" under section 504 of the Rehabilitation Act, requiring adherence to its provisions.

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## BRIEF OF *AMICI CURIAE* IN SUPPORT OF THE PETITION

Pursuant to Rule 37.2 of the Rules of this Court, *amici curiae* submit this brief in support of the petition of the Cellular Phone Taskforce on the Rehabilitation Act issue.[1]

## OPINION BELOW

The opinion of the Court of Appeals on the Rehabilitation Act issue is reported at 217 F.3d 72 (2d Cir. 2000) and appears in the appendix of petitioners, Citizens for the Appropriate Placement of Telecommunications Facilities, *et al.*, hereafter cited as "App.," at A-23-25.

## INTERESTS OF *AMICI CURIAE*

This *amici curiae* brief is filed on behalf of the following disability organizations and individuals with disabilities. The concern of *amici* is that the exemption of federal agency rulemaking from the Rehabilitation Act has created a loophole which eliminates protections previously accorded persons with disabilities at local, state, and federal levels.

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[1] No counsel for any party authored this brief, either in whole or in part. Furthermore, no persons other than *amici curiae*, their members or their counsel contributed financially to the preparation of this brief. The parties have consented to the filing of this brief and their letters of consent have been lodged with the Clerk of the Court.

People with disabilities are protected against discrimination by federal agencies (§ 504 of the Rehabilitation Act ("RA"))[2], and by states and public entities (Title II of the Americans with Disabilities Act ("ADA"))[3]. But, bizarrely, under this court of appeals decision, disabled persons lose their protections against discrimination by both states and public entities if a federal agency so orders. Neither the ADA nor the RA applies, said the court of appeals. The implications for the nation's 54 million[4] people with disabilities are serious and urgent.

Some of the *amici curiae* are individuals or organizations of individuals with chemical and electrical sensitivities. The United States Architectural and Transportation Barriers Compliance Board ("The Access Board") has written,

> Over the years, the Access Board has learned about the very important needs of people with multiple chemical sensitivities and electrical sensitivities. We have heard from thousand[s] of people across the country who are sensitized to chemicals and electromagnetic, radio, and cell phone emissions . . . [5]

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[2] 29 U.S.C. § 794.

[3] 42 U.S.C. § 12131 *et seq.*

[4] This is the current estimate of the National Council on Disabilities.

[5] Letter of October 26, 2000 from James Raggio, General Counsel of the Access Board. The letter is reproduced in the appendix to this brief. The Access Board is a federal agency which develops and enforces accessibility guidelines under the ADA, the Architectural Barriers Act, and the Telecommunications Act.

## IDENTIFICATION OF *AMICI CURIAE*

The following organizations, individuals, and government agency have authorized the preparation and filing of this brief as friends of the Court on their behalf.

DISABILITY COUNCIL OF THE WHITE MOUNTAINS, a non-profit organization founded in 1994 focusing on issues of disability in Navajo and Apache Counties, Arizona.

OREGON STATE REHABILITATION COUNCIL ("SRC"), an advisory board appointed by the Governor, pursuant to the Rehabilitation Act, 29 U.S.C. § 725. SRCs work in partnership with State Vocational Rehabilitation agencies in carrying out State responsibilities under Title I of the RA.

UNITARIAN UNIVERSALIST ASSOCIATION, a religious organization of 1,051 congregations that recognizes accessibility as an issue of social justice.

THE JEREMIAH PROJECT, an outreach ministry of the Presbyterian Church (USA) for people disabled by chemical injury.

NATIONAL CENTER FOR ENVIRONMENTAL HEALTH STRATEGIES ("NCEHS"), a 5,000 member non-profit education and advocacy organization founded in 1986 and focused on indoor air quality, chemical sensitivities, and environmental disabilities. NCEHS was involved in the creation and passage of the Americans with Disabilities Act and was invited to the signing of the Act.

NATIONAL COALITION FOR THE CHEMICALLY INJURED ("NCCI"), a national non-profit education and

advocacy organization founded in 1996 with twelve affiliated support groups for people with chemical injury and related disabilities. NCCI has presented briefings invited by the Access Board.

CHEMICAL INJURY INFORMATION NETWORK, INC. ("CIIN"), a national non-profit educational and support network for people with chemical injury, founded in 1990. CIIN has given testimony before Congress, and has prepared invited reports on chemical injury for the Department of Health and Human Services, the Centers for Disease Control, and the U.S. Interagency Taskforce on Multiple Chemical Sensitivity.

ENVIRONMENTAL HEALTH NETWORK OF CALIFORNIA ("EHN"), a non-profit organization founded in 1987 promoting public awareness of environmental sensitivities and their causative factors and advocating on resulting issues of access. EHN has been active since before the passage of the ADA in advocating in California and nationally for accessibility for people with environmental disabilities.

ENVIRONMENTAL HEALTH ASSOCIATION OF CALIFORNIA, a non-profit organization founded in 1980 and based in the Los Angeles area, providing support, information, and advocacy for people with multiple chemical sensitivities and related disabilities, such as electrical sensitivity.

ECOLOGY HOUSE, INC., a federally funded non-profit housing project in San Rafael, California designed and built for people disabled by multiple chemical sensitivities.

HEALTH AND HABITAT, INC., a non-profit organization based in Mill Valley, California, providing education and research on the connection between the environment and health, working to preserve natural habitats, and promoting healthy housing.

THE CITIZENS' TASKFORCE ON RADIATION EXPOSURE, a citizens' group in Santa Fe, New Mexico representing 1,000 people who have signed a petition opposing cellular communication towers in residential areas.

Joy Rothenberg, Corresponding Secretary of the New York City chapter of the Human Ecology Action League ("HEAL") (participating as an individual). HEAL is a national support organization for people with environmental disabilities.

Linda J. Allen, Scott Hamilton Dykes, Richard Kimball, Marta Sonnenblick, Richard Uhtenwaldt, Sylvia Williamson, and Louise Yost, individuals disabled by electrical and/or chemical sensitivities.

## SUMMARY OF ARGUMENT

The Federal Communications Commission ("FCC") rules at issue regulating radiofrequency ("RF") exposure from the telecommunications industry became effective in August 1996. Since that time the buildout of wireless communication facilities has been so rapid that there is hardly any corner of the country left which is not subject to their effects. RF radiation has known effects on biological systems, and on electronic equipment, including

medical and adaptive equipment required by many individuals with disabilities.

*Amici* respectfully urge that the court of appeals' decision, exempting this FCC rulemaking from the provisions of both the ADA and the RA, is not consistent with the intent or the substance of either, or with the implementing regulations of the FCC itself, and is in conflict with previous decisions of several circuit courts and this Court. *Amici* further urge that the exception to the nondiscrimination laws embodied in this decision would have broad effects far beyond the electrically sensitive, encompassing every type of disability and every type of architectural or other barrier. If agency rulemaking is not a "program or activity" of the agency requiring compliance with the RA (App. A-25), then any federal agency may regulate any industry without regard to the effects of the regulations on persons with disabilities.

The rules in question here not only regulate a pervasive and rapidly growing industry, but preempt state and local government zoning decisions regarding the health effects of that industry. This is precisely the type of situation in which government should be most vigilant to safeguard the rights of those likely to be most affected by this industry, instead of creating new and broad exceptions which abrogate their rights.

## ARGUMENT

### I. THE SECOND CIRCUIT'S LIMITATION OF THE SCOPE OF THE REHABILITATION ACT ABROGATES THE RIGHTS OF DISABLED PERSONS AND CONFLICTS WITH DECISIONS OF THIS AND OTHER COURTS.

Petitioner's RA complaint states that:

> On August 6, 1996 the Federal Communications Commission (FCC) adopted into effect its Report and Order in the Matter of Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62. This action by the FCC discriminates against electrosensitive individuals, numbering at least 2% of the population of the United States.

(App. A-40). The court of appeals refused to rule on the merits of this claim, stating instead that this rulemaking does not fall within "the scope of the Rehabilitation Act's protections" because it is not a " 'program or activity' " within the meaning of the Act (App. A-25).

But the courts, and the federal agencies themselves, including the FCC, have interpreted the language of the RA more broadly. In the case of federal aid recipients, Congress clarified in 1988 that "program or activity" means "all of the operations" of the recipient, 29 U.S.C. § 794(b). *See National Collegiate Athletic Association v. Smith*, 525 U.S. 459, 466 and n.3 (1999).[6]

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[6] The Civil Rights Restoration Act, Pub.L.No. 100-259, amended Title IX of the Education Amendments of 1972, § 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of

In the case of the federal agencies themselves, the Department of Justice, which was responsible for coordinating the implementation of § 504 of the RA,[7] has provided a similar definition: "Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does." 49 Fed. Reg. 35724, 35725 (1984), Final Rule, Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs. The opinion of the Department of Justice, as the responsible agency, is entitled to controlling weight. *Chevron U.S.A., Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984).

The legislative history of § 504 supports this interpretation. When it was amended in 1978 to apply to Executive agencies, Representative James Jeffords, an author of the bill, stated during the debates on the conference report:

> Somehow it did not seem right to me that the Federal Government should require States and localities to eliminate discrimination against the handicapped wherever it exists and remain exempt themselves. So I developed a provision which is in this conference report that extends coverage of section 504 to include any function

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1975, and Title VI of the Civil Rights Act of 1964, all with nearly identical language, to broaden the definition of "program or activity" to include "all of the operations" of a recipient of federal funds. This overturned the Supreme Court's earlier decision in *Grove City College v. Bell*, 465 U.S. 555 (1984), which had given the phrase "program or activity" a narrower meaning.

[7] *See* Executive Order 12250, § 1-201(c).

> or activity in every department or agency of the Federal Government.

124 Cong. Rec. 38,551 (1978).

In agreement with these broad definitions, and in conflict with the Second Circuit's decision, ample case law has recognized that agency rulemaking is subject to the RA. *See Cousins v. Secretary of the U.S. Department of Transportation*, 880 F.2d 603 (1st Cir. 1989) (en banc); *Clark v. Skinner*, 937 F.2d 123 (4th Cir. 1991); *Simms v. NHTSA*, 45 F.3d 999 (6th Cir. 1995). Until now, it appears that no circuit court has questioned the applicability of § 504 to agency rulemaking activity.

The *Simms* case bears striking parallels to the instant case. Petitioners were challenging the validity of National Highway Traffic Safety Administration safety standards for the safe transportation on school buses of students in wheelchairs. They alleged that the standards were not stringent enough. The court noted:

> [T]he petitioners, seeking a change in an Executive agency regulation, presented a claim under the Rehabilitation Act to the agency at the initiation of the rulemaking process and participated in this process every step of the way until a final rule issued. They then followed the prescribed procedure by seeking review in the court of appeals, rather than mounting a collateral attack on the regulations in district court. Under these circumstances, we agree with the courts which have held that the Rehabilitation Act claim is properly before the court of appeals pursuant to a petition for review.

*Id.* at 1010.

The Supreme Court also considered a § 504 challenge to agency rules in *Traynor v. Turnage*, 485 U.S. 535 (1988). Petitioners had challenged a Veterans Administration regulation defining primary alcoholism as "willful misconduct" (thereby disqualifying alcoholics from receiving certain benefits). This Court assumed, without comment, that the RA applied, and specifically decided that petitioners' § 504 claim was entitled to judicial review. 485 U.S. at 545.

The Second Circuit's decision in the instant case conflicts not only with the cases cited above, but with the FCC's own regulations implementing the RA.

### A. The FCC Must Comply With the Rehabilitation Act When Issuing Safety Standards For Licensees.

The FCC's own rules implementing the RA are sweeping. Although the FCC's licensees are not themselves covered by the RA, all of the FCC's own activities related to its licensees, including rulemaking, are so covered. 47 C.F.R. §§ 1.1830(b)(3) and (6), App. A-35-36. And, in its analysis of these provisions, the FCC specifically said that "the Commission must comply with these nondiscrimination requirements when establishing safety standards for the operations of licensees." Report and Order, 2 FCC Rcd Vol. 8 2199, 2203 (1987), App. A-38.

The FCC further elaborated that although its licensees are not covered by the RA, § 504 may indirectly affect aspects of their operations because it covers "the content of the rules established by the agency for the

operation of the program or activity of the licensee." *Id.* at 2204, App. A-38.

Furthermore, the Second Circuit's decision conflicts with *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999). In *Davis*, this Court held that a school board is liable for sex discrimination by third parties over whom it exercises authority, when its "own deliberate indifference effectively 'cause[d]' the discrimination," 526 U.S. at 642-3, citing *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, 291 (1998).

The instant case goes beyond deliberate indifference. The FCC deliberately set rules for its licensees in terms that inescapably affect large numbers of persons with disabilities. This is an action *of the FCC* which is subject to § 504 of the RA.

### B. Federal Agencies Must Comply With the Rehabilitation Act When Regulating State and Local Governments.

When a federal agency, as in this case, preempts one or more functions of state and local government, people with disabilities retain their protections under the nondiscrimination laws, absent clear Congressional intent to abrogate them. It would be an absurd result if the mere transfer of jurisdiction over the environmental effects of RF radiation from one entity covered under a nondiscrimination law (the states) to another entity covered under a nondiscrimination law (the FCC) extinguished both laws. Yet in this case, the Second Circuit has ruled that in such a situation neither the ADA nor the RA any longer apply (App. A-25).

As the Cellular Phone Taskforce writes in its petition for certiorari, both the Ninth and Second Circuits have ruled that zoning is a normal function of government and therefore is covered by the provisions of the RA and the ADA. *See Bay Area Addiction Research v. City of Antioch*, 179 F.3d 725, 731 (9th Cir. 1999); *Innovative Health Systems v. City of White Plains*, 117 F.3d 37, 44 (2nd Cir. 1997). In discussing the phrases "program or activity" (RA) and "service, program, or activity" (ADA), the Second Circuit, in *Innovative Health Systems*, said, "it is a catch-all phrase that prohibits all discrimination by a public entity regardless of context, and that should avoid the very type of hair-splitting analysis the City attempts to make here." *Id.* at 45.

Yet this same type of hair-splitting analysis has been used by the same court to abrogate the rights of persons with disabilities in the instant case. Since the FCC's rule precludes zoning decisions on the very issues that affect many disabled people, the rule itself constitutes a zoning decision subject to nondiscrimination laws. The transfer of jurisdiction over these decisions from the states to the FCC cannot extinguish the protections granted by law to persons with disabilities.

## II. THE SECOND CIRCUIT'S LIMITATION OF THE SCOPE OF BOTH THE REHABILITATION ACT AND THE AMERICANS WITH DISABILITIES ACT CONFLICTS WITH THE CLEAR INTENT OF CONGRESS TO PROTECT DISABLED PERSONS.

In the Rehabilitation Act of 1973, Pub.L.No. 93-112, Congress noted that handicapped individuals have

historically been underserved. Congress proscribed discrimination against an individual "by reason of her or his handicap" under any program or activity receiving Federal financial assistance. 29 U.S.C. § 794(a).

In 1974, Congress clarified that the proscription extended beyond employment to other types of discrimination (Rehabilitation Act Amendments of 1974, Pub.L.No. 93-516).

In 1978, Congress again amended the Rehabilitation Act to extend the proscription against discrimination to all Executive agencies and the United States Postal Service (amendment to 29 U.S.C. § 794, The Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, Pub.L.No. 95-602).

In 1990, in the Americans with Disabilities Act, Pub.L.No. 101-336, "Congress explicitly identified unjustified 'segregation' of persons with disabilities as a 'for[m] of discrimination.' See § 12101(a)(2)." *Olmstead v. L.C.*, 527 U.S. 581, 600 (1999). Title II of the ADA extended the proscription on discrimination to states, local governments, and public entities. At that time the number of Americans with disabilities was said to be "some 43,000,000." 42 U.S.C. § 12101(a)(1).

It is clearly the intent of Congress that individuals with disabilities be protected from discrimination by both federal and state entities, and the instant case reveals a situation in which federal preemption under the Commerce Clause implicates federal and state governments at the same time. Petitioner Cellular Phone Taskforce alleged that the FCC's rules violate the RA, and that they prohibit the states from enforcing the ADA, in violation

of that Act aiso. The court of appeals' ruling that when the FCC regulates states, both RA and ADA protections vanish, is a result which removes the protections afforded people with disabilities and in effect allows abrogation of their rights by the Commerce Clause. This is directly contrary to the stated intent of Congress, which is to invoke the power "to regulate commerce" to *enforce* nondiscrimination, not to abrogate it. 42 U.S.C. § 12101(b)(4).

## III. EFFECTS OF THIS CASE ON OTHER DISABILITIES

### A. Hearing Aids, Wheelchairs, and Medical Devices

This Court has recently denied certiorari in two cases on the issue of radiofrequency interference. In *Freeman v. Burlington Broadcasters*, 204 F.3d 311 (2d Cir. 2000), *cert. denied*, 148 L.Ed.2d 201 (2000), and in *Southwestern Bell v. Johnson County Board*, 199 F.3d 1185 (10th Cir. 1999), *cert. denied*, 147 L.Ed.2d 234 (2000), the courts of appeals held that the FCC has exclusive authority over interference with electronic devices, and that states and local governments may not regulate in this area. Yet if the Second Circuit's decision in the instant case is allowed to stand, the FCC will be allowed to regulate in this area without complying with any nondiscrimination statute.

The plaintiffs in *Burlington Broadcasters* brought suit because local broadcast facilities were causing widespread interference with hearing aids, computers, televisions, telephones, etc. This type of interference also affects electric wheelchairs, pacemakers, and various other medical devices.

The record of the instant case contains ample evidence of the seriousness of these problems:

Testing by Jon Short at BT Laboratories in England in 1992 established that hearing aids are subject to annoying interference from digital cellular apparatus. "The critical field strength is around 4 V/m for perceptible, annoying interference." JA 973.[8] This corresponds to a power density of 42 microwatts per square centimeter, which is more than 100 times less power than the exposure allowed by the FCC's rules.[9]

On June 5, 1995, the Hear-It Now Coalition submitted a petition for rule-making to the FCC asking it to mandate that wireless technologies be made compatible with hearing aids and medical devices. JA 971.

On February 28, 1996, San Diego Mayor Susan Golding wrote a letter to the FCC presenting evidence of interference by wireless facilities with hearing aids, electric wheelchairs, pacemakers, and other devices. She asked the FCC to what extent its regulations preempt the City of San Diego from regulating to prevent such interference. Chairman Reed E. Hundt of the FCC responded on March 15, 1996: "The Communications Act of 1934, as

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[8] "JA" refers to pages of the Joint Appendix submitted to the court of appeals.

[9] At 800 MHz and 1900 MHz, the two frequencies currently used for cellular phones in the U.S., the FCC's rules allow an exposure to the general population of 533 microwatts per square centimeter and 1000 microwatts per square centimeter, respectively. See Table 1(B) of Report and Order, 11 FCC Rcd 15123 (1996), lodged with the Court, at p. 93.

amended, provides the FCC exclusive jurisdiction over radio frequency interference."[10]

On March 22, 1996, Dr. Ken Joyner of Telstra (an Australian telecommunications company) and Dr. John Causebrook of Vodafone (a British telecommunications company) wrote a letter to *Microwave News* stating,

> We have conducted extensive testing of the potential of cellular telephones to interfere with the operation of medical electrical equipment and consulted with manufacturers of that equipment. Our conclusion is that medical electrical equipment should not be exposed to levels above 1 V/m from mobile radio installations.

JA 942. One volt per meter corresponds to 0.27 microwatts per square centimeter, which is more than 2000 times less power than the exposure levels allowed to the general population by the FCC's rules.

**B. Other Disabilities**

The Second Circuit's decision sets a broad precedent. If the setting of rules by federal agencies is not subject to any nondiscrimination law, this affects every mental and physical disability, and every type of architectural or other barrier – not just electromagnetic barriers.

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[10] Letter from Reed Hundt to Susan Golding, p. 6, attachment to comments submitted by Cellular Telecommunications Industry Association, docket entry of June 24, 1996, JA 164.

## IV. THE QUESTION IS IMPORTANT AND URGENT.

The protections afforded 54 million Americans with disabilities are at issue in this case. For some – people who use hearing aids, those who use electric wheelchairs, those with pacemakers implanted, and others dependent on electronic medical or adaptive devices – the particulars of this case make the question of pressing importance.

For those directly medically vulnerable to RF radiation (such as people with some forms of epilepsy, certain heart conditions, and other electrically sensitive people), the question cannot wait. Their numbers may exceed 8 million in the U.S., according to the results of the 1998 California Adult Tobacco Survey. The random survey of 2,072 adults, conducted by the California Department of Health Services in Oakland, revealed that 3.3% reported being electrically sensitive. The authors of this study noted that this is a much higher prevalence than reported in previous estimates.[11]

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[11] P. Levallois, *et al.*, "Prevalence of Self Reported Electrical Hypersensitivity and Associated Factors in California." *Proceedings of the Twenty-Second Annual Meeting of the Bioelectromagnetics Society*, Munich, Germany, June 11-16, 2000, pp. 268-269. This study is part of the California EMF research program, which is mandated by the Public Utilities Commission and financed by California utilities.

## CONCLUSION

For the foregoing reasons, *amici curiae* strongly urge this Court to grant the requested Petition for a Writ of Certiorari of the Cellular Phone Taskforce on the Rehabilitation Act issue.

Respectfully submitted,

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December 4, 2000

## Appendix 1

[SEAL]
United States
Architectural and Transportation Barriers Compliance Board

1331 F Street, NW Washington, DC 20004-1111
202-272-5434 (Voice)
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October 26, 2000

Mr. Nelson French, Director
White Mountain Catholic Charities
Saint Anthony's Convent
6 N. McQuatters Avenue
P.O. Box 552
McNary, Arizona 85930

Dear Mr. French:

I am writing regarding The Dispossessed Outreach Project's plans to seek assistance from the Arizona Department of Commerce to develop housing for people with multiple chemical sensitivities and electrical sensitivities in West Yavapai County. The Access Board is a federal agency whose mission is to promote accessibility for people with disabilities. We develop accessibility guidelines for the built environment, transit vehicles, and telecommunications equipment, and standards for electronic and information technology. Our guidelines are adopted by other federal agencies as enforceable standards under the Americans with Disabilities Act, Architectural Barriers Act, and Telecommunications Act. We

also enforce accessibility standards for federally funded facilities.

Over the years, the Access Board has learned about the very important needs of people with multiple chemical sensitivities and electrical sensitivities. We have heard from thousand [sic] of people across the country who are sensitized to chemicals and electromagnetic, radio, and cell phone emissions and who cannot safely use facilities because of chemicals released from building materials and furnishings, exposure to certain types of electrical equipment and systems, and cleaning products and pesticides commonly used in operating and maintaining buildings. The Access Board is initiating a major project to examine the needs of people with multiple chemical sensitivities and electrical sensitivities as they relate to indoor environmental quality, and to develop an action plan to address those needs. We will be involving people with multiple chemical sensitivities and electrical sensitivities, the building industry, and other federal agencies, including the Environmental Protection Agency, in the project. We also are developing technical assistance materials that will focus on best practices for addressing the needs of this population.

Based on our experience, I can state that there definitely is a need for specially planned and designed housing for people with multiple chemical sensitivities and electrical sensitivities. There are many people with these and related disabilities whose condition is so severe that they cannot live in conventional housing. We recently visited Ecology House, an 11-unit apartment development in San Rafael, California; talked with its residents;

and learned first hand about the special design and construction practices that have made the project habitable for people who could not tolerate other housing. The housing project being planned by The Dispossessed Outreach Project would build on the experiences of Ecology House and meet a real need for healthy and affordable housing by people who have no other choices.

If I can be of further assistance, please call me at (202) 272-5451.

Sincerely,

/s/ James J. Raggio
James J. Raggio
General Counsel

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